



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON CONSUMER BANKERS ASSOCIATION PETITION FOR DECLARATORY RULING ON PREEMPTION OF INDIANA TELEMARKETING RULES

CG Docket No. 02-278

Comments Due: 30 Days After Publication in the Federal Register

Reply Comments Due: 45 Days After Publication in the Federal Register

On November 19, 2004, Consumer Bankers Association ("CBA" or "Petitioner") filed a petition for declaratory ruling asking the Federal Communications Commission ("Commission") to preempt certain sections of the Indiana Revised Statutes and Indiana Administrative Code ("Indiana laws") as applied to interstate telephone calls.¹ Specifically, CBA requests that the Commission preempt the Indiana laws to the extent they prohibit telemarketing calls to persons and entities with which the caller has an established business relationship as defined in the Commission's rules.² CBA indicates that the Indiana laws provide that a telephone solicitor may not make a telephone sales call to a telephone number if that number appears on the state's do-not-call list. According to CBA, Indiana's prohibition on calls to numbers on the Indiana do-not-call list is subject to exceptions that partially overlap with, but are substantially narrower than the "established business relationship" ("EBR") of the Commission's telemarketing rules. CBA contends that, unlike the Commission's EBR definition, the Indiana exceptions: 1) do not include relationships based upon a consumer's past inquiry or application, during the three months preceding the call, regarding the party's products or services; 2) do not include calls to persons with whom the caller has engaged, within 18 months prior to the call, in a purchase or transaction as to which payment has been made or performance completed; and 3) do not expressly permit an EBR to extend to any affiliated entities that the consumer reasonably would expect to be included within that category.³

¹ See Petition for Declaratory Ruling, CG Docket No. 02-278, filed November 19, 2004 (*Petition*). CBA cites Burns Ind. Code Ann. § 24-4.7-4 (2004) and Ind. Admin. Code § 11 IAC 1-1-4 and § 11 IAC 1-1-3.5 (2004). See *Petition* at 2-4.

² See *Petition* at 1.

³ See *Petition* at 3.

In addition, CBA explains that Indiana's statutory prohibitions apply to all telephone solicitors doing business in Indiana, including those making sales calls to consumers in Indiana from a location outside Indiana. Thus, CBA argues that the Indiana telemarketing statute "plainly subjects the CBA's member institutions to 'multiple, conflicting regulations' and frustrates 'the federal objective of creating uniform national rules' for telemarketing."⁴ CBA therefore requests that the Commission preempt those sections of the Indiana Statutes and Administrative Code that purport to prohibit interstate telemarketing calls that are permitted under the Commission's rules.

Pursuant to Sections 1.415 and 1.419 or the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the 30th day after publication of this *Public Notice* in the Federal Register, and reply comments may be filed on or before the 45th day after publication of this *Public Notice* in the Federal Register. When filing comments, please reference CG Docket No. 02-278. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

⁴ *Petition at 5 (citing Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 18 FCC Rcd 14014, 14064, para. 83 (2003)).*

This proceeding shall be treated as a “permit but disclose” proceeding in accordance with the Commission’s *ex parte* rules, 47 C.F.R. §§ 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclosed proceedings are set forth in section 1.1206(b) of the Commission’s rules, 47 C.F.R. § 1.1206(b).

The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpweb.com or by calling 1-800-378-3160.

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FOR FURTHER INFORMATION CONTACT: Kelli Farmer, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-2512 (voice), Kelli.Farmer@fcc.gov.

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